

U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



BRB No. 20-0460
Case No. 2018-LHC-00809
OWCP No. 07-309788

ANTONIO DIAZ-MALDONADO)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
CONRAD INDUSTRIES, INCORPORATED)	
)	
and)	DATE ISSUED: 10/29/2020
)	
AMERICAN LONGSHORE MUTUAL)	
ASSOCIATION c/o A.E.U.,)	
INCORPORATED)	
)	
Employer/Carrier-)	
Respondents)	ORDER

Employer has filed a motion to dismiss as untimely the appeal filed by Claimant, who is not represented by legal counsel. 20 C.F.R. §802.401(b). Claimant responds that the Benefits Review Board should deny Employer's motion.

We grant Employer's motion as Claimant's appeal was not timely filed. The administrative law judge's original Decision and Order was filed and served by the district director on March 5, 2020. 33 U.S.C. §919(e); 20 C.F.R. §702.350. Claimant filed a motion for reconsideration on April 20, 2020, which the administrative law judge denied as untimely and without merit. This Order was filed and served by the district director on April 24, 2020. Assuming for the sake of argument Claimant's motion for reconsideration tolled the time for filing an appeal, *see* 20 C.F.R. §802.206, any appeal to the Board had to

be filed within 30 days after April 24, 2020, at the latest.¹ 33 U.S.C. §921(a); 20 C.F.R. §§802.205, 802.206(e). As Claimant did not file an appeal with the Board until August 3, 2020, well after the 30-day statutory deadline, the law requires we dismiss his appeal.² *See, e.g., Beach v. Noble Drilling Corp.*, 29 BRBS 22 (1995) (order on recon. en banc) (McGranery, J., concurring) (Brown, J., dissenting).

Accordingly, we dismiss claimant's appeal as it was untimely filed.³

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

¹ The 30th day fell on a Sunday, May 24, 2020. Monday, May 25, was a federal holiday. Thus, any appeal had to have been filed by May 26, 2020. 20 C.F.R. §802.221(a).

² Claimant's July 1, 2020, letter to the administrative law judge also cannot be considered a timely appeal to the Board.

³ A motion for modification under 33 U.S.C. §922 to claim a change in condition or a mistake in a determination of fact in the prior decision may be viable.